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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA
13

14 STEPHEN CHARGIN,

CV F [02- 5751](#) REC LJO P

15 Plaintiff,

16 v.

THIRD ORDER DIRECTING THE US
MARSHAL TO INITIATE SERVICE OF
PROCESS ON DEFENDANT HERNANDEZ
WITHOUT PREPAYMENT OF COSTS

17
18 NANDAN BHATT, et. al.,

19 Defendants.
20 _____/

21 Stephen Chargin ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis
22 in this civil rights action pursuant to 42 U.S.C. § 1983.

23 On February 4, 2005, this Court issued Findings and Recommendations that case against
24 the remaining Defendant Hernandez, be dismissed for Plaintiff's failure to provide sufficient
25 information that would enable the U.S. Marshal to serve him. Plaintiff filed Objections on
26 February 22, 2005, requesting that the Court attempt service again and require the California
27 Department of Corrections to cooperate. Previous attempts by the U.S. Marshal to serve
28 Defendant Hernandez were unsuccessful. The Litigation Coordinator at Corcoran State Prison

1 indicated that there were numerous Correctional Officers employed at CSP-Corcoran and that a
2 first name or initial was needed before service could be effected.

3 In his Objections, Plaintiff provides information that the Defendant Hernandez he sought
4 to serve was on the second watch (day shift) assigned to the Security Housing Unit (SHU) at
5 CSP-Corcoran, Building 4A-1R-22 on January 15, 2002.

6 The court and the Marshal have a statutory duty to service process on Plaintiff's behalf,
7 and the response given to the Marshal by Litigation Coordinator at CSP-Corcoran to date is
8 insufficient to allow the court to discharge this duty on the ground that Defendant Hernandez
9 cannot be located. 28 U.S.C. 1915(d); Fed. R. Civ. P. 4(c)(2). Accordingly, IT IS HEREBY
10 ORDERED that:

11 1. The Clerk of the Court is DIRECTED to forward the following documents to the
12 United States Marshal:

13 (1) One completed and issued summons for Defendant C/O Hernandez to be
14 served;

15 (2) One completed USM-285 form for Defendant C/O Hernandez to be
16 served;

17 (3) One copy of the Amended Complaint filed on August 12, 2002 for
18 Defendant Hernandez, plus an extra copy for the Marshal;

19 (4) One copy of this order for Defendant C/O Hernandez be served, plus an
20 extra copy for the Marshal;

21 (5) One copy of the Court's consent form for Defendant C/O Hernandez to be
22 served.

23 2. Within **TEN (10)** days from the date of this Order, the United States Marshal is
24 directed to notify the Defendant C/O Hernandez of the commencement of this
25 action and to request a waiver of service in accordance with the provisions of Fed.
26 R. Civ. P. 4(d) and 28 U.S.C. § 566(c):

27 **C/O HERNANDEZ**

28 3. The U.S. Marshal is DIRECTED to retain the summons and a copy of the

complaint in their file for future use.

4. The United States Marshal SHALL file returned waivers of service as well as any requests for waivers of service that are returned as undelivered as soon as they are received.

5. In attempting to identify and locate Defendant Hernandez, if the Litigation Office at CSP-CORCORAN is unable to assist, the Marshal is DIRECTED to seek the assistance of the Employment Office at CSP-CORCORAN, and, if necessary, contact the Legal Affairs Division in Sacramento and request the assistance of a special investigator.¹

6. If a waiver of service is not returned by a defendant within sixty days of the date of mailing the request for waiver, the United States Marshal shall:

a. Personally serve process and a copy of this Order upon the Defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c) and shall command all necessary assistance from the California Department of Corrections (CDC) to execute this order. The United States Marshal SHALL maintain the confidentiality of all information provided by the CDC pursuant to this order.

b. Within **TEN (10)** days after personal service is effected, the United States Marshal shall file the return of service for the Defendant, along with evidence of any attempts to secure a waiver of service of process and of the costs subsequently incurred in effecting service on said defendant. Said costs shall be enumerated on the USM-285 form and shall include the costs incurred by the Marshal's office for photocopying additional copies of the summons and complaint and for preparing new USM-285 forms, if required. Costs of service will be taxed against the personally served defendant in accordance with the provisions of Fed. R. Civ. P. 4(d)(2).

¹ If necessary, the Marshal's Office may contact the pro se writ clerk at (559) 498-7227 to obtain the telephone and facsimile numbers for the Employment Office at CSP-CORCORAN.

1 7. In the event that Defendant makes an appearance in this action by filing an
2 Answer, dispositive motion, or other pleading, the U.S. Marshals Service need not
3 personally serve Defendant.

4 8. In the event that Defendant either waives service or is personally served,
5 Defendant is required to reply to the complaint. 42 U.S.C. § 1997e(g)(2).
6

7 IT IS SO ORDERED.

8 **Dated: June 21, 2005**
9 b9ed48

/s/ Lawrence J. O'Neill
UNITED STATES MAGISTRATE JUDGE